

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION

CIVIL NO. 2:01CV19

UNITED STATES *ex rel.*, KAREN)
T. WILSON,)

Plaintiffs,)

Vs.)

GRAHAM COUNTY SOIL & WATER)
CONSERVATION DISTRICT;)

GRAHAM COUNTY; CHEROKEE)
COUNTY SOIL & WATER)

CONSERVATION DISTRICT;)
RICHARD GREENE, in his individual)

capacity; WILLIAM TIMPSON, in his)
individual capacity; KEITH ORR, in)

his individual and official capacities;)
GERALD PHILLIPS, in his)

official capacity; RAYMOND)
WILLIAMS, in his official capacity;)

DALE WIGGINS, in his official)
capacity; ALLEN DEHART,)

in his official capacity; LLOYD)
MILLSAPS, in his official capacity;)

BILLY BROWN, in his individual)
capacity; LYNN CODY, in his official)

capacity; BILL TIPTON, in his official)
capacity; C. B. NEWTON, in his)

official capacity; and EDDIE WOOD,)
in his official capacity,)

Defendants.)
_____)

ORDER

THIS MATTER is before the Court on the parties' various motions to dismiss.

On August 14, 2006, Defendants Cherokee County Soil and Water Conservation District, Bill Tipton, C. B. Newton, and Eddie Wood ("Cherokee County Defendants") moved to dismiss Section B of the Third Amended Complaint alleging claims under the False Claims Act in connection with the Farm Services Agency Program. The motion alleged both that the allegations of the complaint failed to plead fraud with specificity and that this portion of the complaint failed to state a claim upon which relief might be granted. On August 30, 2006, the Plaintiff responded that Tipton, Newton and Wood were sued only in their official capacities and that no claims were asserted against them under Section B of the complaint. No statement was made as to Defendant Cherokee County.

On August 15, 2006, Defendant Jerry Williams moved to dismiss the complaint for failure to plead with specificity. He pointed out that the only paragraph of the complaint containing allegations against him was paragraph 36 contained within Section B of the complaint, the section dealing with the Farm Services Agency. On August 30, 2006, the Plaintiff

filed a response in which she vehemently protested the claims made in his motion.

On August 15, 2006, Defendant Keith Orr moved to dismiss the complaint against him but failed to file a brief in support thereof. On August 30, 2006, the Plaintiff responded by pointing out that omission.

Inexplicably, on September 14, 2006, the Plaintiff filed a one sentence motion to dismiss Section B in its entirety and to dismiss Gerald Phillips in his individual capacity and Jerry Williams from the action altogether. No reason was provided.

IT IS, THEREFORE, ORDERED that the Relator's Motion for Partial Dismissal is **ALLOWED**, and Section B of the Third Amended Complaint is hereby **DISMISSED**; the only claims remaining in this action are those alleged in Section A of the Third Amended Complaint.

IT IS FURTHER ORDERED that Defendant Jerry Williams is hereby **DISMISSED** entirely from this action.

IT IS FURTHER ORDERED that Defendant Gerald Phillips remains in this action only in his official capacity.

IT IS FURTHER ORDERED that any allegations contained within the Third Amended Complaint that Defendants Tipton, Wood and Newton are sued in their individual capacities are hereby **STRICKEN**.

IT IS FURTHER ORDERED that the motions of the Cherokee County Defendants, Defendant Jerry Williams, and Defendant Keith Orr to dismiss are hereby **DENIED** as moot.

Signed: September 26, 2006

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

